

**DEPARTMENT OF STATE REVENUE
LETTER OF FINDINGS NUMBER: 02-0568
Sales and Use Tax
For the Years 1999- 2000**

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUES

I. Tax Administration- Interest

Authority: IC 6-8.1-5-1(b), IC 6-8.1-10-1(a)(e).

The taxpayer protests the imposition of interest.

II. Tax Administration- Ten Per Cent (10%) Negligence Penalty

Authority: IC 6-8.1-10-2.1, 45 IAC 15-11-2 (b).

The taxpayer protests the imposition of the ten percent (10%) negligence penalty.

STATEMENT OF FACTS

The taxpayer operated a gas station. After an audit, the taxpayer was assessed additional sales and use tax, interest, and penalty. The taxpayer protested the assessment of penalty and interest and a hearing was scheduled. The taxpayer failed to appear. This Letter of Findings is based upon the documentation in the file.

I. Tax Administration- Interest

DISCUSSION

All tax assessments are presumed to be accurate and taxpayers bear the burden of proving that any assessment is incorrect. IC 6-8.1-5-1(b).

The department assessed interest against the taxpayer pursuant to IC 6-8.1-10-1(a) as follows:

If a person fails to file a return for any of the listed taxes, fails to pay the full amount of tax shown on his return by the due date for the return or the payment, or incurs a deficiency upon a determination by the department, the person is subject to interest on the nonpayment.

In this case, the taxpayer had a sales and use tax deficiency. The department, pursuant to the terms of the statute, imposed interest. IC 6-8.1-10-1(e) states that “the department may not waive the interest imposed under this section.” Therefore, the department has no authority to waive the interest assessment.

FINDING

The taxpayer’s protest is denied.

II. Tax Administration- Ten Per Cent (10%) Negligence Penalty

DISCUSSION

The taxpayer protests the imposition of the ten percent (10%) negligence penalty pursuant to IC 6-8.1-10-2.1. Indiana Regulation 45 IAC 15-11-2 (b) clarifies the standard for the imposition of the negligence penalty as follows:

Negligence, on behalf of a taxpayer is defined as the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer. Negligence would result from a taxpayer’s carelessness, thoughtlessness, disregard or inattention to duties placed upon the taxpayer by the Indiana Code or department regulations. Ignorance of the listed tax laws, rules and/or regulations is treated as negligence. Further, failure to reach and follow instructions provided by the department is treated as negligence. Negligence shall be determined on a case by case basis according to the facts and circumstances of each taxpayer.

The taxpayer purchased miscellaneous supplies on which sales tax was not paid at the point of purchase. The taxpayer’s disregard of its duty to self assess and remit use tax on these purchases constitutes negligence.

FINDING

The taxpayer’s protest is denied.

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